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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re

LESLIE JAMES GAINES,

On Habeas Corpus.

F072604

(Kings Super Ct. No. 15CM7047)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Leslie James Gaines, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Jamie A. Scheidegger, Deputy Attorneys General, for Respondent.

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Petitioner seeks a belated appeal.

On February 24, 2015, petitioner was charged with one count of possession of a dangerous weapon by an inmate. The complaint also alleged that petitioner suffered a prior strike conviction.

* Before Gomes, A.P.J., Kane, J., and Peña, J.

On June 4, 2015, pursuant to a plea agreement, petitioner pled no contest and admitted the prior strike conviction. He was sentenced to a term of eight years.

On July 24, 2015, the Clerk of the Kings County Superior Court received a letter from petitioner. The letter stated in pertinent part as follows:

“I was recently in one of the court rooms in the Hanford Superior Court. I was a defendant, in a possession of an inmate manufactured weapon. I would like to file an appeal in your court for a violation of my rights, during the filing of the information.

“I have the :[sic] Notice of Appeal” formating, and the letter to your court already prepared. I, However, do not have the form, or the format, for the required ‘probable cause’ certification, that is to accompany that notice of appeal, pursuant to California’s Rules of Court.

“... I need that case number from your office, as well as the form/formating information for the notice of appeal....

“This appeal is taken after plea of nolo contendere. Pursuant to penal code §1237.5, defendant that files the appeal must attach a certificate of probable cause, or declaration in support of certificate of probable cause. This appeal is based solely on grounds involving The Maranda [sic] rights of the defendant, discovered upon the application of due diligence, after the entry of such plea that do not challenge the validity of the plea.

“For the above reason I need the clerk’s assistance with the filing’s requirements.”

DISCUSSION

“[T]he construction of notices, particularly by incarcerated prisoners acting in pro. per., has been extraordinarily liberal.” (6 Witkin, Cal. Criminal Law (4th ed. 2012) Criminal Appeal, § 92.)

The letter from the Attorney General dated April 29, 2016, does not dispute that the above quoted letter constitutes a constructive filing citing *People v. Griggs* (1967) 67 Cal.2d 314 and *In re Gonsalves* (1957) 48 Cal.2d 638.

The fact that the superior court clerk marked the letter “received” and returned it to petitioner does not negate the application of the doctrine of constructive filing.

(People v. Griggs, supra, 67 Cal.2d 314; United Farm Workers of America v. Agricultural Labor Relations Bd. (1985) 37 Cal.3d 912.)

Pursuant to the Attorney General's letter and the above analysis, this court concludes that petitioner's letter to the Clerk of the Kings County Superior Court, received on July 24, 2015, constitutes a constructive filing entitling him to a belated appeal.

DISPOSITION

The Clerk/Administrator of this court is directed to send copies of petitioner's letter, the notice of appeal dated October 21, 2015, and the attached request for certificate of probable cause to the Clerk of the Kings County Superior Court.

Let a writ of habeas corpus issue directing the Clerk of the Kings County Superior Court to file said copies in case No. 15CM7047, to deem said copies timely filed, and to proceed with the preparation of the appropriate record on appeal in accordance with the applicable rules of the California Rules of Court.